

REMARKS

I. Introduction

With the cancellation herein of Claims 58-62, 64-71, 73-82, 84-95 and 97, and with the addition herein without prejudice of new claims 98-111, claims 98-111 are pending in the present application. In view of the foregoing amendment, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

II. Examiner Interview

Applicant submits herewith a statement of the substance of the telephone interview conducted on February 13, 2007 between Examiner Frank Choi and Applicant's representative, Thomas C. Hughes (Reg. No. 42,674).

During the course of the telephone interview, no exhibit was shown and no demonstration was conducted. During the course of the telephone interview, claims 58-62, 64-71, 73-82, 84-95 and 97 were discussed, and these claims were discussed in view of the following specific prior art: U.S. Patent No. 6,482,448 ("*Tabor*") in view of U.S. Patent Nos. 6,019,999 ("*Miller et al.*"), 5,550,166 ("*Ostlund et al.*"), and 6,004,926 ("*Shimizu et al.*") and U.S. Published Patent Application No. 2001/0041187 ("*Hastings et al.*"). Applicant's representative proposed to amend the claims to recite the feature of "a dietary supplement comprising, in amounts effective to enhance muscle size and/or strength, protein and a compound which mimics or enhances insulin activity." Applicant argued that none of the references cited in the Final Office Action disclose or suggest that the combination of a compound which mimics or enhances insulin activity and a protein may provide the synergistic effect of further and significant muscle size and strength enhancement as compared with supplements employing only proteins or amino acids. In support of the inventiveness of this feature, Applicant's representative directed the Examiner's attention to the Specification, which states at page 3, line 31 – page 4, line 23, that:

"[t]he food supplements and methods of the present invention may provide further and significant size and strength enhancement through the role of certain substances which mimic and/or increase the sensitivity of insulin, in conjunction with a source of amino acid. . . . , increased availability of these GPI precursors, increase insulin sensitive and these GPIs can trigger insulin signalling pathways and events independent of insulin thereby mimicing the effects of insulin . . . and can thereby increase

the development of muscle cells. Consequently, supplements which comprise a substance which can enhance and/or mimic insulin activity, and a source of amino acids, preferably any source of protein, more preferably, whey, may provide further and significant muscle size and strength enhancement as compared with supplements employing only proteins or amino acids." Emphasis added.

The Examiner indicated that he would give consideration to evidentiary support for this assertion. Such evidentiary support is provided herewith in the form of a "Declaration of Dr. Marvin Heuer," which concludes that supplements which comprise a substance which can enhance and/or mimic insulin activity, and a protein do, in fact, provide further and significant muscle size and strength enhancement as compared with supplements employing only proteins or amino acids.

III. Rejection of Claims 78-82, 84-95 and 97 Under 35 U.S.C. §112

Claims 78-82, 84-95 and 97 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claims 78-82, 84-95 and 97 have been canceled herein without prejudice. Therefore, Applicant respectfully maintains that these rejections are moot. Furthermore, the language objected to in the Office Action is not recited in any of new claims 98-111.

It is therefore respectfully submitted that all of the presently pending claims fully comply with the requirements of 35 U.S.C. § 112, first paragraph, and withdrawal of this rejection is therefore respectfully requested.

IV. Rejection of Claims 58-62, 64-71, 73-82, 84-95 and 97 Under 35 U.S.C. 103

Claims 58-62, 64-71, 73-82, 84-95 and 97 were rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of U.S. Patent No. 6,482,448 ("*Tabor*") in view of U.S. Patent Nos. 6,019,999 ("*Miller et al.*"), 5,550,166 ("*Ostlund et al.*"), and 6,004,926 ("*Shimizu et al.*") and U.S. Published Patent Application No. 2001/0041187 ("*Hastings et al.*"). Claims 78-82, 84-95 and 97 have been canceled herein without prejudice. Therefore, Applicant respectfully maintains that these rejections are moot.

V. New Claims 98-111

New claims 98-111 are presented herein. New independent claim 98 is directed to a method for supplementing the diet of a human comprising orally administering a dietary supplement comprising effective amounts of protein and a compound which mimics or enhances insulin activity to enhance muscle size and strength. It is respectfully submitted that new claim 98, and new claims 99-111 that depend therefrom, are patentable over the combination of *Tabor* in view of *Miller et al.*, *Ostlund et al.*, *Shimizu et al.* and *Hastings et al.*

As set forth above, new claim 98 includes the feature of “a dietary supplement comprising, in amounts effective to enhance muscle size and/or strength, a protein and a compound which mimics or enhances insulin activity.” It is respectfully submitted that the combination of *Tabor*, *Miller et al.*, *Ostlund et al.*, *Shimizu et al.* and *Hastings et al.* does not disclose, or even suggest, administering a dietary supplement comprising, in amounts effective to enhance muscle size and/or strength, protein and a compound which mimics or enhances insulin activity.

None of the references cites in the Final Office Action disclose or suggest that the combination of a compound which mimics or enhances insulin activity and a protein may provide the synergistic effect of further and significant muscle size and strength enhancement as compared with supplements employing only proteins or amino acids. Of the cited references, the Final Office Action relies only on *Ostlund et al.* as disclosing a compound that mimics or enhances insulin activity. However, *Ostlund et al.* purports to relate to pinitol and derivatives thereof for the treatment of metabolic disorders. Specifically, *Ostlund et al.* state that “[p]initol and derivatives and metabolites thereof are useful in nutritional and medicinal compositions for treating conditions associated with insulin resistance, such as . . . complications arising from athletic activity or inactivity.” *Ostlund et al.* do not provide any guidance as to what is meant by “complications arising from athletic activity or inactivity.” Applicant respectfully maintains that *Ostlund et al.* do not disclose or suggest that such a composition is suitable for enhancing muscle size and/or strength, but rather only to address undefined “complications arising from exercise activity or inactivity.”

For at least this reason, it is respectfully submitted that new claims 98-111 are allowable over the combination of *Tabor*, *Miller et al.*, *Ostlund et al.*, *Shimizu et al.* and *Hastings et al.*

VI. Fees

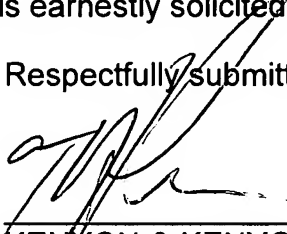
Any additional fees or charges required at this time in connection with this application may be charged to Patent and Trademarks Office Deposit Account No. 11-0600.

VII. Conclusion

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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